FILED
MAY 19 2003
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No. 02-1512

In the Supreme Court of the United States

ARBON STEEL & SERVICE CO., INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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4 pp

QUESTION PRESENTED

Whether 28 U.S.C. 2411 or the Fifth Amendment to the Constitution authorizes an award of pre-judgment interest on a judgment for the return of fees collected by the United States under the Harbor Maintenance Tax, 26 U.S.C. 4461.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 2-10) is reported at 315 F.3d 1332. The opinion of the Court of International Trade (Pet. App. 11-29) is reported at 178 F. Supp. 2d 1354.

JURISDICTION

The judgment of the court of appeals was entered on January 10, 2003. The petition for a writ of certiorari was filed on April 10, 2003. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(l).

STATEMENT

1. Petitioner is an exporter of goods. Pursuant to this Court's decision in *United States* v. *United States Shoe Corp.*, 523 U.S. 360 (1998), petitioner received a

refund of payments it made to the United States under the Harbor Maintenance Tax, 26 U.S.C. 4461. The Court of International Trade, however, denied petitioner's claim for pre-judgment interest on the amount of that refund. Pet. App. 11-29.

2. Relying in large part on its prior decisions in *International Business Machines Corp.* v. *United States*, 201 F.3d 1367 (2000), cert. denied, 531 U.S. 1183 (2001), and *United States Shoe Corp.* v. *United States*, 296 F.3d 1378 (Fed. Cir. 2002), petition for cert. pending, No. 02-1221 (filed Feb. 19, 2003), the court of appeals affirmed. Pet. App. 2-10.

ARGUMENT

This case presents the same questions presented in *United States Shoe Corp.* v. *United States*, No. 02-1221. The petition in this case should be denied for the same reasons set forth in the brief in opposition to the petition for a writ of certiorari in *United States Shoe Corp.*, No. 02-1221.*

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

THEODORE B. OLSON
Solicitor General

MAY 2003

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* We are serving herewith to petitioner a copy of the brief in opposition filed by the government in *United States Shoe Corp.* v. *United States*, No. 02-1221.